IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.686 OF 1988

1. Babasaheb Apparao Patil, age-25)
   r/o. Boramani, Tal. South)
   Solapur, Dist. Solapur.)

2. Tanaji Manikrao Patil)
   age-23, r/o as above)

3. Appasha Dharmarao Patil)
   age-25, r/o as above)

4. Prakash Limbanna Koli)
   alias Jamadar, age-30)
   r/o as above.)
   (At present in Solapur Dist.)
   Prison).)..Appellants

Versus

The State of Maharashtra)..Respondent

Mr.V.M.Thorat for Appellant nos.1 & 3.

Mrs.V.R.Bhosale, APP for the State.

Coram : S.S.Parkar &
R.S.Mohite,JJ

Date : 26.8.2004 and
27.8.2004.

Judgment :- (Per : Mohite,J)

1. The appellants (here-in-after referred to original accused nos.1 to 4) filed this appeal for quashing and setting aside the Judgment and Order passed by the IVth Additional Sessions Judge, Solapur on 26th July, 1988 in Sessions Case No.198 of 1987, convicting the appellants for an offence

under Section 302 read with 34 of Indian Penal Code and sentencing them to suffer rigorous imprisonment for life and to pay a fine of Rs.1000/- each, in default to suffer further rigorous imprisonment for 6 months each.

2. At the very outset, the record indicates that the appellant nos.2 & 4 (original accused no.2 Tanaji and original accused no.4 Prakash Koli @ Jamadar) expired during the pendency of this appeal. However, as the sentence of fine has been imposed against them, we have heard the appeal against all the accused.

3. The brief facts of the prosecution case were as under :-

(a) That one Manikrao Patil was a resident of village Boramani, Taluka & District Solapur. Accused no.2 Tanaji was the son of Manikrao. Accused no.1 Babasaheb and accused no.3 Appasha Patil were the cousin brothers of accused no.2 Tanaji. Accused no.4 was not related to the other accused persons but was known to them. On 7.6.1986 i.e. about 12 days prior to the incident of murder, one Abhimanyu Rama Bhagare had assaulted the father of accused no.2 i.e. Manikrao Patil by using a sattur. Abhimanyu was a good friend of the deceased Baburao Vibhute. Manikrao suspected that the

assault on him by Abhimanyu had been instigated by the deceased Baburao.

(b) The incident of murder took place on 19.6.1986. On that day one of the eye witnesses (PW 10) Sidram Birajdar, who was then the Sarpanch of village Boramani had come to Boramani S.T.stand for having a cup of tea in the S.T.stand canteen. At that time the deceased Baburao Vibhute came there in a Jeep. The jeep was being driven by (PW 11) Prakash Rajguru who was a temporary driver engaged by the deceased Baburao. Baburao, who was known to Sidram, requested him to come alongwith him to Solapur as he wanted to obtain some certificates from the banks. Sidram therefore, boarded the jeep of deceased Baburao and both of them alongwith one Suresh Rokade and the driver of the jeep Prakash proceeded towards Solapur. They reached Solapur at about 1.30 P.M. and first went to D.C.C.Bank Branch situated in the Market Committee Yard. They obtained the certificate required by deceased Baburao and then came to the Zilla parishad office. In the premises of Zilla Parishad, office of the Land Development bank was situated. They went into the office of Land Development bank and obtained another certificate. Thereafter, when they came near the gate of the Zilla parishad office, (PW 10) Sidram informed the deceased Baburao that he would wait at the said office and that Baburao should finish his

business and come to that place by about 5.00 P.M.

(c) After leaving (PW 10) Sidram at the Zilla parishad office, the deceased Baburao alongwith his driver Prakash and Suresh Rokade came to Vikas hotel for taking meals. However, instead of taking meals, they drank some beer and subsequently returned back to the agreed meeting place near the Zilla parishad office. There they met (PW 10) Sidram who was waiting for them and all 4 of them started on their return journey to village Boramani at about 4.00 P.M. By about 5.30 P.M. they were near the Hyderabad Octroi post. Baburao suggested that they should stop for some refreshment and therefore, (PW 11) Prakash drove the jeep to the hotel of Khansaheb. The deceased made an enquiry at the hotel of Khansaheb as to whether vegeterian meals were available. They were told that vegeretian meals were not available. The deceased Baburao then asked his driver Prakash to go and purchase 4-5 bottles of beer and bring them to the hotel. For purchase of such beer, Rs.100/- was given to Prakash by Suresh. Accordingly, Prakash brought the beer from a restaurant and all the persons were sitting and enjoying their beer in the hotel of Khansaheb.

(d) One Shivaji Rajguru was a labourer and used to work in the field of Baburao a long time prior to this incident. There had been some disputes between

Baburao and Shivaji. Shivaji had taken some excess money, over and above the remuneration due to him from Baburao. Baburao had demanded this money and instead of repaying the same, Shivaji had left his service and alongwith his wife (PW 19) Sundarabai had gone to reside in village Mulegaon. While Baburao, his driver Prakash, Sidhram and Suresh were having their beer in the hotel of Khansaheb, this erstwhile labourer Shivaji passed alongwith the road outside the hotel in a bullock-cart. Shivaji was on his way to Solapur to purchase material for the roof of his house. While he passed by he looked at the group of Baburao and said "Musare khau". This was heard by Sidhram (PW 10) and Suresh. Baburao was told about this utterance made by Shivaji and on hearing this, he directed that they should follow Shivaji and apprehend him. Baburao, Sidhram and Prakash then followed Shivaji in their jeep and stopped him near Shringar Odha. Baburao asked Shivaji as to whom he had addressed the words "Musare khau". Baburao abused Shivaji and asked him to either repay his money or to serve him. These 3 persons caught hold of Shivaji and brought him to Khansaheb hotel. The bullock-cart in which Shivaji had been travelling belonged to somebody else and that bullock cart went ahead on its way. At the hotel Baburao again abused Shivaji and once again demanded repayment in cash or in the form of service. Shivaji expressed his in-ability to pay

cash but agreed to serve Baburao.

(e) At about 6.00 P.M. these 4 persons i.e. Baburao, labourer Shivaji, (PW 10) Sidram and (PW 11) Prakash then recommenced their journey in the jeep towards village Boramani. After they have crossed the sign board of village Mulegaon, they saw (PW 19) Sunderabai, the wife of Shivaji, signalling them to stop. Accordingly, (PW 11) Prakash stopped the jeep. Baburao, Rokade and Sidhram got down from the jeep. They went towards the rear side of the jeep and were speaking to Sunderabai. Baburao demanded repayment of the due money from Sunderabai. Sunderabai told Baburao that she would pay his money but he should release her husband.

(f) While such talk was going on on the rear side of the jeep of Baburao, another jeep came from the west side i.e. from the Solapur side. This jeep was parked in front of the jeep of Baburao. From this jeep, accused no.3 Appasha Patil got down. Accused no.1 Babasaheb followed him with a pistol in his hand. Accused no.2 then got down from the jeep wielding an instrument like Jamiya. Accused no.3 Appasha came to the rear side of the jeep of deceased Baburao and grabbed Baburao from behind. Accused no.2 Tanaji then dealt a blow on the stomach of Baburao by using the Jamiya. After receiving this blow, Baburao fell down on the ground on his

back. After Baburao fell down, accused no.1 fired bullets on the chest of Baburao. On seeing that bullets had been fired by Babasaheb, Sidram (PW 10) out of fear started running away towards Kalyani Petrol Pump. The said Kalyani Petrol Pump was situated at the distance of about 4 furlong to the east of the scene of the offence. When he came to Kalyani Petrol Pump, Sidram (PW 10) stopped a truck and by paying Rs.20/- to the driver, fled to Hyderabad. (PW 11) Prakash the driver of Baburao also witnessed this entire incident. He heard accused no.4 Prakash saying that they should catch the driver and therefore, he fled through the open field till he reached the highway near Mulegaon farm house. He then proceeded towards Solapur where his uncle Kisan Ingale (PW 18) resided. He reached the house of his uncle at about 9.00 P.M. and narrated the entire incident to him.

(g) According to Kisan Ingale (PW 18), on 19.6.1986 he was at his house and had just finished his meals by 9.00 P.M. At that time, his nephew came to his house and appeared to be in a frightened condition. Kisan asked him as to what had happened and he was told by Prakash that his employer Baburao had been murdered. Prakash further told this witness that accused no.2 Tanaji had dealt a blow to Baburao by using a Jambiya and that accused no.1 Baburao had fired a pistol at his employer. He further

disclosed that this entire incident had occurred near the sign board of Mulegaon village. Kisan gave him food and kept him in his own house on that night.

(h) On the morning of the next day, Kisan and Prakash started from Solapur with the aim of going to the police station to report the matter. However, on the way, another nephew of Kisan by name Sanmukh who was serving as a Ward-boy at Civil hospital Solapur met them. Sanmukh told them that Baburao had expired and his uncle had called Prakash to the Civil hospital. They all therefore, went to the Civil hospital, Solapur. At the Civil hospital, Prakash met the uncle of Baburao by name Mallikarjun. He also met the brother of the deceased Baburao. After some time, a police jeep came to the hospital. The police took Prakash to the Taluka police station where his statement was recorded at about 11.00 A.M. on 20.6.1986.

(i) In the meanwhile, events concerning this incident were unfolding elsewhere. On 19.6.1986 (PW 28) CPI Bhaskar Patil was incharge of the police control room in Solapur. At 9.10 P.M. on that day he received a phone call from an unknown person informing him that Baburao had been murdered near Mulegaon by the firing of a revolver from the jeep.

The informant told him that accused no.2 Tanaji and accused no.1 Babasaheb had committed this murder. This police officer made an attempt to get further details from the informant but the unknown informant hung up the telephone. (PW 28) Bhaskar Patil then made an entry in the station diary (at Serial no.41) regarding the telephonic message received by him. At 9.15 P.M. he immediately conveyed the information received by him to (PW 33) PSI Annasaheb Patil attached to the Taluka police station within whose jurisdiction the murder was said to have been committed. He also informed the jail road police station about the information received. Regarding informing these 2 police stations, he made another station diary entry at Serial no.42. Thereafter also he made entries in respect of all consequential messages received and communicated by him and these entries were made at serial nos.42 to 49.

(j) On receiving information from the control room, (PW 33) Annasaheb Patil made an entry in the station diary of the Taluka police station, Solapur and immediately went towards the scene of the offence. At the scene of the offence, he saw a jeep standing on the Solapur-Hyderabad road after the Mulegaon bifurcation. The jeep was facing east towards Boramani. On inspecting the place he found a dead body lying in a dried up brook-let to the north of the road. The body was lying on its back with the

feet towards the north and head towards the south. With the aid of a search light, he conducted an inspection. Head constable Kengar who was with him identified the dead body to be that of Baburao. They found 9 deep injuries on the body of Baburao, on the chest, stomach, knees, fingers etc. They turned the dead body and found injuries on the back. They found one circular little plate was sticking to skin and it was covered with blood. The clothes of the deceased were also soaked in blood. (PW 33) Annasaheb removed all the clothes of the deceased except his undergarments. He prepared an inquest panchanama (Ex.10) and attached all the garments under the inquest panchanama. He then called for a photographer for taking photographs of the dead body. The photographs so taken were exhibited at Exh.28 to 39 by the trial court. He then sent the dead body of Baburao for post mortem. He deputed some constables for keeping a vigil at the scene of the offence and returned to Taluka police station.

(k) At the police station (PW 33) PSI Annasaheb Patil lodged a FIR under his own signature and registered the offence under Section 302 read with 34 of Indian Penal Code and under Section 25 of the Arms Act. The crime was registered as C.R.No.91/86 on the basis of his FIR (Exh.129).

(l) On 20.6.1986 (PW 33) PSI Annasaheb returned to

the scene of the offence. He found that the scene of the offence was near mile stone no.253/4 on the Solapur-Hyderabad road. At the scene of the offence the ground admeasuring 2 feet x 2 feet was soaked in blood. He collected the samples of the soil from this place. He found a pair of chappals in the front compartment of the jeep and another pair of chappals in the rear compartment. He found beer bottles in the front compartment of the jeep. He found some chappals on the road at the rear of the jeep and these chappels had blood stains. Behind the jeep there was a stone covered with blood. Near the dead body he found a goggle and a dagger. There were some articles in the pocket of the garments of the deceased. This witness then prepared a panchanama of the scene of the offence (Exh.40) and got the same signed by 2 panchas. The articles seized by him at the spot were articles-1 to 17 produced before the court.

(m) On 20.6.1986 PSI Patil recorded the statements of Prakash, Shivaji, Sunderabai, Mumtaz Patel and others. He found that Shivaji had an injury on his back and therefore, sent Shivaji for treatment to the hospital. He had called a dog unit to trace the culprits but this did not result in any detection.

(n) On 21.6.1986 he received an advance medical certificate from the Doctor attached to the Civil

hospital, Solapur. Constable Jadhav produced the underwear of the dead body and this was attached by (PW 33) Annasaheb under a panchanama (Exh.11). Annasaheb then recorded the statement of the uncle of the deceased Mallikarjun Vibhute and others.

(o) On 23.6.1986 (PW 10) Sidram who had fled to Hyderabad returned back to village Boramani. His statement was recorded by (PW 33) Annasaheb on that day. PSI Annasaheb made efforts to trace the accused. He searched for them at Boramani and nearby villages like Musti, Baramani etc. The accused however, remained absconding and could not be traced. On 4.7.1986 (PW 33) PSI Patil transferred the investigation to (PW 29) Nasir Ahmed Khan.

(p) On 5.7.1986 the investigating officer, PSI Nazir Ahmed Khan (PW 29) renewed his efforts to trace the accused. He sent the garments of the deceased, a dagger found at the scene of the offence, samples of blood, chappals, sample of soil and stone covered with blood in a sealed packet with forwarding letter to Chemical Analyser, Bombay with Constable Bansode. This was done under a forwarding letter (Exh.21). As the accused could not be traced, PSI Khan applied to the JMFC court for issuance of a warrant. He sent a letter to the Circle Inspector requesting him to draw a map of the scene of the offence, enclosing

a panchanama of the scene of the offence. On 15.7.1986 he handed over the investigation to (PW 30) CPI Gopal Kulkarni. In the meanwhile, the accused had been unsuccesful in their attempt to obtain anticipatory bail and in fact were directed by the High court vide order dated 22.7.1986 to surrender to the police on 24.7.1986 at Taluka police station, Solapur. Accordingly, the accused surrendered to the Taluka police station Solapur on 24.7.1986 and were taken into custody. (PW 30) CPI Kulkarni had obtained police remand of all the accused. He attached a jeep bearing No.MXS 9072 which was parked outside the house of one Sitaram Kale under a panchanama (Exh.42). On 27.7.1986 accused no.4 Prakash made a confessional statement volunteering to produce a country made pistol and 2 knives from a place in the field of Govindrao Deokate at Neera Wagaj. His statement was reduced to writing by (PW 30) Gopal Kulkarni in the presence of 2 panchas. In consequence of his statement the police alongwith accused no.4 proceeded to the field of Ganpatrao at Neera Wagaj. Ganpatrao was not in his house as he has gone to Boramani. Accused no.4 Prakash then took the police and panch party to the Babul tree behind the vasti and took out 2 polythene bags buried near the tree. In these 2 polythene bags, a pistol and 2 daggers were found. He also produced a G.I. sheet which had been kept over the place where these articles were buried and all these

articles were seized under a panchanama (Exh.117). The articles so seized, were articles-18 to 21 as produced before the court. The police panch party then returned to Boramani.

(q) After returning to Boramani, (PW 30) CPI Kulkarni interrogated accused no.3 Appasha Patil. From accused no.3 he learnt that after the incident the accused had first stayed at Mathura lodge and later at Vijayraj lodge. The CPI then went to Mathura lodge which is situated near railway station Pune with the accused. On taking search of the records of the lodge it was learnt that the accused had stayed there from 27.6.1986 to 29.6.1986 and that the entry in the register of the lodge had been made by accused no.3 Appasha under a false name of S.C.Mali. (PW 30) CPI Kulkarni seized the register and the bill books of the said lodge under a panchanama (Exh.118). He recorded the statement of one Bhiku Kadam and 2 others at Mathura lodge and then returned to Solapur. Since he had to go to Mumbai for some court matter, he directed PSI Kadam to hold charge of further investigation.

(r) On 31.7.1986 the accused were remanded to magisterial custody. On 7.8.1986 (PW 30) CPI Kulkarni recorded the supplimentary statements of (PW 10) Sidram, (PW 11) Prakash and Suresh Rokade. These supplimentary statements were recorded after

showing the seized jeep to this witnesses.

(s) On 13.08.1986 CPI Kulkarni sent the muddemal property to the Chemical Analyser's office at Mumbai alongwith a forwarding letter (Exh.22). Amongst the muddemal, articles sent were the seized pistol, blood samples of accused, sealed bottles containing skin of the deceased, pellets found in the body of the deceased by the Medical officer and the garments seized from the accused during the investigation.

(t) On 5.9.1986 CPI Kulkarni received a direction that the investigation in this case should be handed over to the CID and accordingly he handed over the investigation to CID Inspector Mr.Dhandore of Solapur.

(u) It appears that PI Dhandore handed over the investigation on 24.7.1987 to CID Inspector Raghunath Lamture (PW 31). On 12.8.1987 CID Inspector Raghunath Lamture addressed a letter to the Additional District Magistrate for obtaining sanction to prosecute the accused for the offence under the Arms Act. Such sanction was accorded by the Additional District Magistrate and on completion of the investigation, Inspector Lamture filed a charge-sheet in the court of JMFC Court No.2, Solapur.

4. After the committal of the case to the Court of Sessions, the trial court framed a charge against the accused under Section 302 read with section 34 of the Indian Penal Code and under Section 25 of the Arms Act. During the trial, the prosecution examined as many as 33 witnesses to prove its case. The defence of the accused as could be gathered from the suggestions put to the witnesses and from their 313 statements was of total denial. After considering the entire evidence and other material on record, by the impugned Judgment and order, the trial court convicted all the 4 accused for the offences punishable under Section 302 r/w. 34 of Indian Penal Code. The trial court however, acquitted the accused for the offence under Section 25 of the Arms Act on the ground that sanction has not been properly obtained. In view of their conviction and sentence, the accused have preferred the present Appeal.

5. The contentions raised on behalf of the defence could be briefly summarised as under :-

(i) That the evidence of the 2 eye witnesses viz. Sidram Birajdar (PW 10) and Prakash Rajguru (PW 11) was not worthy of belief and ought to have been dis-carded. It was contended that the versions given by these 2 alleged eye witnesses were inherently improbable and sufferred from various

infirmities. That Sidram Birajdar (PW 10) was the Sarpanch of village Boramani and was a close friend of deceased Baburao. He claimed that after the incident, he sat in the truck and fled to Hyderabad. It was contended that the story about going to Hyderabad was a mere pretext to cover the fact that his statement had been recorded by the police on 23.6.1986 i.e. after a delay of 3 days. That the investigating officers had not recorded the statement of anybody from Hyderabad and had also not obtained any other corroborative evidence to indicate that Sidram (PW 10) was in Hyderabad for a period of 3 days. It was suggested that Sidram was a got up witness who had been put up as an eye witness by the police at a belated stage. Certain contradictions in his deposition before the court were also relied upon. It was contended that Prakash (PW 11) was an employee of the deceased Baburao. Though Prakash claimed to have seen the entire incident, he had not disclosed the names of accused nos.3 & 4 to his uncle Kisan Ingale (PW 18). That the record indicated that Prakash first had a talk with the Uncle of the deceased by name Mallikarjun and the brothers of the deceased and only thereafter the statement of Prakash (PW 11) had been recorded by the police. It was thus suggested that Prakash (PW 11) was also a got up witness. It was further contended that there were other circumstances which remained unexplained. There was

no trail of blood from the road where the witnesses noticed the assault and where the dead body was actually found. That the empties in respect of shells fired into the deceased had not been traced. That the blood group on the clothes of the accused had not been determined. That the entire story about the accused being arrested in the same blood stained clothes that they were wearing at the time of the offence was unbelievable as the accused had surendered more than a month after the incident. It was contended that admittedly there were two factions in the village and it was probable that the accused had been falsely implicated in the incident.

(ii) The learned APP supported the reasoning of the trial court. She contended that the evidence of (PW 10) Sidram and (PW 11) Prakash was rightly accepted by the trial court as the same was natural and adequately corroborated. She argued that Prakash (PW 11) was the driver of the deceased and since they were travelling in a jeep his presence at the spot of the offence was natural. She contended that infact the presence of (Pw 10) Sidram at the scene of the offence was not seriously disputed by the defence and what was suggested to this witness was that he had not seen the incident at the spot. It was submitted that the evidence of the Chemical Analyser clearly revealed that the seized pistol had been fired. That the discovery statement relating

to the pistol and the 2 daggers was made within 3 days of arrest. One of the daggers also had human blood though the blood group could not be determined due to the long lapse of time.

6. We now first deal with the evidence of the eye witnesses. Out of the 4 eye witnesses examined by the prosecution, (PW 26) Shivaji Rajguru and his wife Sundarabai (PW 19) did not support the prosecution and were declared hostile. The 2 eye witnesses who did support the prosecution were (PW 10) Sidram, the Sarpanch of Boramani and (PW 11) Prakash, the driver of the jeep belonging to the deceased Baburao.

7. Sidram (PW 10) in his Examination-in-chief stated that he was a Sarpanch of Boramani Grampanchayat till 1985. The deceased Baburao was a member of the said Grampanchayat from the year 1984 till his demise. That on 7.6.1986 one Abhimanyu who was known to him had assaulted the father of accused no.2 Tanaji, Manikrao Patil by a sattur. Abhimanyu was a close friend of the deceased Baburao and therefore, Manikrao was suspecting that Baburao had incited Abhimanyu to make the assault on him. That on 19.6.1986 he had come to Boramani S.T.stand from his field. When he was enjoying a cup of tea in the canteen of the S.T.stand, Baburao came there in a jeep. The jeep was being driven by Prakash.

Baburao requested him to come with him to Solapur as he had to obtain some certificate. Sidram therefore, boarded the jeep and he alongwith Baburao, Prakash and one Suresh went to Solapur. They reached Solapur at about 1.30 P.M. and then went to the branch of D.C.C.bank situated at market Committee Yard. From there, they took a certificate and came to the Zilla parishad office in which premises the office of the Land development bank was situated. They went to the Land Development Bank and obtained another certificate. After coming out of the bank, they came to the gate of Zilla parishad office. This witness told Baburao that he will wait at the office and Sidram should go to complete his business and come back there by about 5.00 P.M. Baburao then went to complete his work and returned back to the office of the Zilla parishad at about 5.20 P.M. This witness then boarded the jeep and sat in front of the side of the driver. The 4 persons then commenced their return trip to village Boramani. On the way back, they reached Khansaheb hotel and Baburao suggested that they should take their meals there. At the hotel they asked the hotel owner whether vegeterian meals were available but the owner answered in the negative. At that time, Shivaji, who was a labourer who used to earlier work in the fields of Baburao passed down the road towards Mulegaon. Prakash informed about this fact to Baburao. This witness, Baburao and

Prakash then chased Shivaji and accosted him near the Shringar odha. Baburao then asked Shivaji to repay his money or to serve him. Baburao abused and belaboured Shivaji. Shivaji was then made to sit in the jeep and was brought back to the hotel of Khansaheb. At the hotel, once again Baburao demanded money from Shivaji. Shivaji agreed to serve Baburao. Thus, this witness, Shivaji, Prakash and Baburao restarted from Khansaheb hotel and proceeded in their journey towards Boramani. Sidram was again sitting in the front of the side of the driver. At the sign board of Mulegaon village near the Laman tanda, they saw Sunderabai, the wife of Shivaji making a signal by her hand and requesting the jeep to stop. They stopped the jeep. This witness and Baburao got down from the jeep. Baburao went to the rear side of the jeep and was talking with Sunderabai. Sunderabai was telling Baburao that she will pay his money but he should release her husband. At that time one jeep came from the direction of Solapur and parked itself in front of the jeep of Baburao. From this jeep, the first person to alight was accused no.3 Appasha. Accused no.1 Babasaheb followed him with the pistol in his hand. Accused no.2 Tanaji also got down from the jeep and he was holding a Jamiya. Accused no.3 Appasha came to the rear side of the jeep of Baburao. He grabbed Baburao from the backside. Then Tanaji gave a blow by Jamiya in the stomach of

Baburao. On receiving this blow, Baburao fell on the ground on his back. At that time accused no.1 Babasaheb fired his pistol on the chest of Baburao. This witness stated that in all 4 persons had got down one after another but he had not paid any attention to the fourth person. On hearing the firing of the pistol, out of fear, this witness ran towards Kalyani Petrol pump and when he reached the said Petrol pump, he stopped a truck going towards Hyderabad and by paying Rs.20/- to the driver of the truck, he went to Hyderabad. He claims to have reached Hyderabad on 20.6.1986 at 5.00 P.M. He returned to Boramani from Hyderabad on 23.6.1986 and on that day his statement was recorded by the police. This witness identified the chappals belonging to him, to Rokade, deceased Baburao and Prakash Rajguru being article nos. 8, 9, 12 and 13 respectively. He also identified the shirt, payjama and Goggle belonging to deceased Baburao. These were articles nos.2, 4, & 6 respectively. In his cross-examination, this witness admitted that accused no.1 was working as the Police patil in the village from 24.2.1986. He further admitted that Baburao was member of the Grampanchayat in the past and he had tendered his resignation in the year 1986. He admitted that accused no.1 was the Deputy Sarpanch of the village and that after his resignation there had been an election where one Lalchand was elected as a member and Deputy Sarpanch

of the Grampanchayat. He denied that in his statement recorded by the police on 23.6.1986 he had stated that after Khansaheb told them that vegeterian meals are not available in the hotel, he himself, Baburao and Suresh sat there to drink beer. This contradiction was brought on record and marked as "A". He denied that he has stated before the police that after returning to the hotel, Baburao again belaboured Shivaji. This contradiction was brought on record and marked as "B". An omission in his police statement dated 23.6.1986 about the deceased falling on his back after receiving the first Jamiya blow was brought on record. He stated that after reaching Hyderabad at 5.00 P.M. on the evening of 26.6.1986 he had stated that he stayed at the transport office on 21st and 22nd and arrangement for him had been made by the manager of the office Devdas Chavan. He admitted that he has not given the name of Devdas to the police. He stated that he has started back from Hyderabad on 22.6.1986 at about 4.00 P.M. in a truck. That the driver and the cleaner of the truck were with him and the truck was stopped at two Octroi posts on the return journey. He stated that he had disclosed to the police that he had returned to Solapur on 23.6.1986 but could not give any reason as to why this statement was not found in the police statement. Another omission relating to the firing of the bullets at the chest of the deceased was also

brought on record. This omission was however, restricted only to the place where the pistol was fired in the chest.

8. On perusal of this evidence, we find that the same is cogent and does not suffer from any major infirmities. The presence of this witness Sidram in the jeep when the same was stopped near the sign board of village Mulegaon is corroborated by (PW 11) Prakash. The contradictions brought on record pertain to the parties drinking beer in the hotel of Khansaheb and the belabouring of Shivaji by Baburao. These have no bearing on the main incident and cannot be said to be material contradictions. The omissions, in our view, which pertain to the deceased falling on his back and the firing being on the chest of Baburao is also not a material omission which would amount to a contradiction. There is no omission as regards the actual assault by jambiya made by accused no.2 Tanaji and the firing of the pistol by accused no.1 Babasaheb. The evidence of these witnesses is corroborated by the medical evidence which indicate several blows which can be caused by jambiya as well as pistol shot wound found on the abdomen of the deceased. It may be that pallets were found in the abdomen and this witness stated that the pistol was fired at the chest. In our view, not much importance can be given to this variation. It would all depend upon a minute detail

as to the angle in which the gun was fired. The omission that after the first blow the deceased Baburao fell on his back also is not very material and is only matter of detail. The injuries sustained by the deceased Baburao were such as would be suffered by person falling on his back. Almost all the injuries were on the front side except the exit wound caused by firing of the gun. It was sought to be argued that there is no reason for this witness to run away to Hyderabad. That the entire story given by this witness that he left for Hyderabad on 19.6.1986 and returned 3 days later on 23.6.1986 was only a subterfuge to cover up a gross delay in the recording of this witnesses' statement by the police. It was contended that he could have gone to Solapur instead of Hyderabad. That his evidence did not indicate that there was any particular reason for this witness to go to Hyderabad. That his evidence that they reached at Hyderabad at 5.00 P.M. on the evening of 20.6.1986 was also unnatural as such a long time was not required to a truck to reached Hyderabad. We are unable to appreciate any of these submissions. It appears that this witness ran away from the spot and stopped the first truck which was on its way to Hyderabad. Seeing the terrible murder, he must have been in a frightened state of mind. Whether he should have stopped at Solapur is not a question that we can answer. The evidence of this witness

shows that the truck was stopped at Octroi posts. It is common knowledge that the truck drivers sometimes park their truck and sleep on the road side at night. In this background, that they reached Hyderabad on the next day at 5.00 P.M. cannot be said to be un-natural. No suggestion is put to this witness that on his return to Boramani on 23.6.1986, he met any of the relations of Baburao before giving his statement to the police. In our view, his evidence can be relied upon for the purpose of convicting the accused.

9. The next eye witness (PW 11) Prakash was the driver of Baburao. He stated that on 19.6.1986 at about 12.00 noon, he himself, Baburao, Sidram and Suresh started from the village for going to Solapur. On reaching Solapur, they stopped the jeep at D.C.C.bank market yard branch. They reached the said spot at 1.00 P.M. Baburao and Sidram finished their work within half an hour. Then they went to the land development bank which was situated in front of the Zilla parishad office in Solapur. They had stopped there for about 1 to 1 & 1/2 hour. Sidram remained in the office of the Zilla parishad. That he himself, Baburao and Rokade were then came to Vikas hotel for meals. However, they did not take meals at Vikas hotel and returned to the Land Development Bank. Baburao then went into the Bank and returned in about 10 minutes. Thereafter, he,

Baburao, Rokade and Sidram started on the return journey at about 4.00 P.M. They reached Hyderabad Octroi post at about 5.30 P.M. and this witness parked the jeep in front of hotel of Khansaheb on the instructions of Baburao. On making enquiries, they found that vegeterian meals were not available there. They were sitting in the hotel for some time. Baburao had asked Rokade to bring beer. He gave Rs.100/- to Prakash out of which Prakash purchased 4/5 bottles and brought the said to the hotel of Khansaheb. At that time the labourer Shivaji was passing by. He looked at their group and uttered the words "Musare khau". These words were heard by Rokade and this witness and this witness told Baburao about the said utterance of Shivaji. On the say of Baburao, this witness, Baburao and Sidram chased Shivaji who was travelling in a bullock-cart and accosted him in a Shringar odha. Baburao asked Shivaji to repay the money due to him or to serve him. They brought Shivaji in to the hotel in a jeep. At the hotel, Baburao again abused and demanded repayment of cash or in the form of service. That later this witness, Sidram, Shivaji, Suresh Rokade and Baburao started for the village at about 5.45 or 6.00 p.m. When they crossed the sign board of Mulegaon village, wife of Shivaji viz. Sunderabai made a signal to stop the jeep and thus the jeep was stopped. This witness got down and similarly Baburao, Rokade and Sidram

also got down. They went to the back of the jeep. Baburao once again demanded repayment of money due to him. This witness got down from the jeep and went to the other side of the road to pass urine. When he was returning to the jeep, another jeep came from the direction of Solapur and that jeep stopped in front of their jeep. From the 2nd jeep accused no.3 and accused no.2 got down wielding Jambiyas. They were followed by accused no.1 Babasaheb who was armed with a revlover. Babasaheb was wearing a yellow shirt. Accused no.4 also got down from the jeep. Appasaheb grabbed Baburao from the back. Accused no.1 gave filthy abuses to Baburao. After that accused no.2 Tanaji dealt a blow on the stomach of Baburao by using the dagger with him. Baburao fell down. After Baburao fell down, Babasaheb fired a bullet on his chest. Accused no.4 Prakash then shouted that they should catch the driver and therefore, this witness got afraid and ran away through the field. He reemerged onto the highway near Mulegaon farm house. He then went to Solapur at the house of his maternal uncle. He reached the house at his uncle at about 9.00 to 9.30 P.M. He narrated the incident to his maternal uncle. He stayed there for the night. On the next day morning he and his maternal uncle started to go to the police station. On their way, they met Sanmukh Ingale, the nephew of his uncle, who was serving as a Ward boy at the Civil hospital. Sanmukh told them

that Baburao had expired and that his uncle has called this witness to the Civil hospital. After some time, the police jeep came and statement of this witness was recorded at 11.00 P.M. on 20.6.1986 at Taluka police station. In the court, this witness identified (article-13) were his chappels. He stated that he left his chappels at the spot because he could not run quickly by wearing his chappel. He also identified article-12 as a pair of chappels belonging to his employer Baburao. In his cross-examination this witness admitted that he had applied for the post of Police patil. He stated that accused no.1 had also made an application for the same post. He admitted that after his application was rejected, he had preferred an appeal against the rejection since he was from backward class. He admitted that Babasaheb and 3 others were parties to this appeal. That he had not received any communication about any decision on his appeal. He denied that Baburao, Sidram and Suresh had been sitting at the hotel in Solapur to drink beer. The contradiction in this regard was brought on record. Another contradiction relating to his going to purchase 5 beer bottles and the consumption of the said beer was also brought on record and marked as "B". An omission about the bullet being fired at the chest of the deceased was brought on record. This omission was however, limited to the exact place of the body on which the gun was fired.

This witness admitted that at the Civil hospital he had met the uncle of Baburao viz. Malikarjun and the brothers of Baburao. He denied the suggestion that he was giving false evidence implicating the accused at the instigation of the brother of Baburao. He denied the suggestion that after Sidram stopped their jeep, a tempo came there and 7/8 persons got down from the tempo and attacked the group of Baburao and that since he felt afraid of these 7/8 assailants, he ran away. In our view, there are no major infirmities in this evidence which corroborates the evidence of the eye witness (PW 10). The contradiction brought on record pertaining to the bringing and drinking of beer are not directly relating to the incident and cannot be said to be a material contradiction. Similarly as already observed by us here-in-above, the omission relating to the firing being on the chest of the deceased also cannot be said to be a very material omission. There is no omission as regards the firing by accused no.1 Babasaheb on deceased Baburao. The fact that this witness had met the uncle of the deceased Malikarjun and the brother of the deceased at the Civil hospital by itself cannot be a ground to dis-believe this witness. The presence of the relatives of Baburao at the Civil hospital was natural. This witness being the driver of the deceased Baburao, going to the Civil hospital where the body of his employer was kept also cannot

be said to be un-natural. On going there, he must have met the relatives of the deceased. We find no reason from the record as to why the uncle of the deceased or the brother of the deceased would falsely implicate the accused. One other circumstance which corroborates the evidence of this witness is that on the next day morning when the scene of the offence was surveyed by the Investigating officer, he found 2 chappals at the distance of 70 feet and 95 feet from the dead body on the opposite side of the road. These were the chappals identified by this witness as being his own. The finding of chappals corroborates the version given that because of fright, he ran away on the southern side. This witness had claimed that he had crossed the road and gone to southern side for the purpose of urinating and the finding of his chappals on that side corroborates the version given by this witness. The medical evidence also corroborates the version given by this witness as an injury possible by a Jamiya was found on the dead body of the deceased Baburao. We find that the evidence of this witness also can be used to secure the conviction of the accused.

10. Having said this, we noticed that there is absolutely no role attributed to accused no.4 Prakash. No doubt, (PW 11) Prakash stated that Prakash shouted that the driver should be caught

which caused him to run away. But this version is not supported by Sidram (PW 10) who does not attribute any role to accused no.4 what-so-ever. As far as accused no.3 is concerned, no doubt both the eye witnesses i.e. Sidram (PW 10) and Prakash (PW 11) stated that he had caught hold of Baburao from behind while Baburao was assaulted by accused no.2 Tanaji by a jamiya. However, there are several circumstances on record which according to us create some doubt about the presence of accused nos.3 & 4 on the spot. These circumstances are as under :-

(a) That the evidence of (PW 28) CPI Bhaskar Patil indicates that when the anonymous call was received the caller had stated that the murder of Baburao had been committed by accused no.1 Babasaheb and accused no.2 Tanaji. This is corroborated by the entry which he made in the station diary. This was also the information passed on by him to Annasaheb Patil (PW 33) as reflected in the station diary entry made by Annasaheb Patil. There is no mention of accused nos.3 & 4 in the information so given by the unknown informant.

(b) That according to Prakash (PW 11) he immediately went to the house of his uncle (PW 18) Kisan Ingale and disclosed the incident to him. The evidence of Kisan (PW 18) however shows that Sidram (PW 10) had only disclosed to him that accused no.2 Tanaji had

dealt a blow to his employer Baburao by using a Jamiya and that accused no.1 had fired a pistol at his employer near the sign board of Mulegaon. His evidence does not indicate that Prakash had disclosed about the presence of accused nos.3 & 4 at the spot or about the role said to have been played by accused no.3 i.e. of holding the deceased Baburao in order to facilitiate Tanaji giving a Jamiya blow.

(c) That there is no discovery made at the behest of accused no.3.

(d) That the clothes of accused nos.3 & 4 contain no blood stains and no blood stained clothes of these accused were found.

(e) That there is discrepency in the evidence relating to the circumstance of the accused absconding. It was the prosecution case that after the incident the accused were first hiding in hotel Mathura lodge from 23.6.1987 to 29.6.1987 and thereafter in hotel Vijayraj from 29.6.1986 onwards. With the aid of the hand-writing expert the entry in the false name said to have been made in Mathura lodge has been proved to be in the hand-writing of accused no.3. Similarly the writing in the register of Vijayraj hotel also in a false name is stated by

the hand-writing expert to be in the hand-writing of accused no.3. However, there is a discordant note in the evidence of Gulabchand (PW 12) who was a peon

in Vijayraj hotel since this witness stated that it was accused no.2 who had made this entry. This creats some doubt relating to the veracity of the circumstance of the accused absconding. The evidence relating to absconding will also not help the prosecution in establishing that accused nos.3 & 4 were a part of the group of assailants.

11. In view of the aforesaid circumstances, we intend to give the benefit of doubt to accused nos.3 & 4.

12. We therefore, confirm the conviction of accused no.1 Babasaheb and accused no.2 Tanaji was proper. We however, hold that the benefit of doubt can be given to accused nos.3 & 4. We note that accused no.3 had expired and since his heirs are not before us, we would like to modify his sentence, cancelling the fine imposed upon him by the trial court.

13. In the net result, we pass the following order :-

O R D E R

(a) That the appeal is partly allowed and appellant no.3 Appasha Patil and appellant no.4 Prakash Koli @ Jamadar are acquitted of all charges against them.

(b) That the conviction of accused no.1 Babasaheb and accused no.2 Tanaji under Section 302 read with 34 of Indian Penal Code is confirmed and the sentence imposed upon accused no.1 is also confirmed. In so far as accused no.2 is concerned, since accused no.2 has expired during the pendency of this appeal, in so far as sentence of imprisonment is concerned, appeal stands abated. However, the sentence of fine is quashed. The fine if any paid by accused nos.2, 3 & 4 may be refunded. Accused no.1 shall surrender to his bail bond forthwith. The bail bond of accused no.3 shall stand cancelled.

(c) The Judgment and order dated 26.7.1988 passed by the IVth Additional Sessions Judge, Solapur in Sessions Case No.198/97 to stand modified to the aforesaid extent.

(S.S.Parkar,J)

(R.S.Mohite,J)